

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of:	:	Examiner: Nicholas Kiswanto
	:	
Thilo LEINEWEBER et al.	:	
	:	
For: METHOD AND DEVICE FOR	:	
CONTROLLING THE SPEED OF A	:	
MOTOR VEHICLE	:	
	:	
	:	Art Unit: 3664
Filed: March 9, 2004	:	
	:	
Serial No.: 10/797,680	:	
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Mail Stop Appeal Brief - Patents
 Commissioner for Patents
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 Signature: /Elizabeth Tretter/
 Elizabeth Tretter

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

SIR:

This paper is responsive to the “Examiner’s Answer” dated November 4, 2009 in connection with the above-captioned application. For the reasons more fully set forth below and in the “Appeal Brief Pursuant to 37 C.F.R. § 41.37” (“the Appeal Brief”), it is respectfully submitted that the present rejections should be reversed.

1. ARGUMENTS

Claims 1, 2, and 5 stand rejected under 35 U.S.C. § 102(b) as anticipated by Asada et al. It is respectfully submitted that Asada et al. does not anticipate any of the present claims as explained below.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor*

Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To the extent the Examiner may be relying on the doctrine of inherent disclosure in support of the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

A. Claims 1 and 2 are not anticipated by Asada et al.

Claim 1 of the present application recites:

A device for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the device comprising:

an arrangement for allowing a distance to a preceding vehicle to be set by a driver of the vehicle in the form of a time gap;

an arrangement for changing longitudinal dynamics of the speed control when the time gap changes;

an arrangement for **increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system** so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

an arrangement for **first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.**

As regards the feature of *increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system*, the Examiner relies on column 5, line 40 to column 6, line 4 of Asada et al. However, this section of Asada et al. does not identically disclose, or even suggest, increasing a maximum possible vehicle acceleration or a maximum possible vehicle deceleration implementable by a speed control system. Instead, Asada et al. explicitly states that “the vehicle speed control section 23 limits the acceleration to a predetermined maximum acceleration α_{max} which, in this example, is equal to 0.06 G” and nowhere does Asada et al. indicate changing this predetermined maximum value. (Asada et al., col. 5, lines 57 to 59 (emphasis added)). Moreover, Asada et al. repeatedly states this

predetermined maximum acceleration value of 0.06 G throughout its description. (See e.g. Asada et al., col. 6, lines 20 to 21; and col. 8, lines 17 to 19, and 45 to 46). Thus, the maximum acceleration of Asada et al. is predetermined, and is not increased, given a decrease in the time gap.

The Advisory Action and the Final Office Action at page 4 assert that column 5, lines 53 to 57 of Asada et al. “teaches increasing a maximum possible acceleration given a decrease in the time gap.” However, in the context of the example of Asada et al. described in column 5, lines 38 to 64, the cited section merely refers to the time rate of change of the desired time gap, i.e., the cited section merely indicates how quickly the actual time gap is increased/decreased upon setting a desired time gap, in order to match the actual time gap to the desired time gap. However, nowhere does this cited section refer to increasing a maximum possible vehicle acceleration or a maximum possible vehicle deceleration. In this regard, as more fully set forth above, Asada et al. explicitly and repeatedly indicates a predetermined maximum acceleration of 0.06 G that limits acceleration regardless of the actual or desired time gap, and no change to this predetermined maximum is contemplated by Asada et al.

The Examiner’s Answer at page 5 asserts that the “term ‘maximum possible acceleration/deceleration’ is boundless since it does not specify a rate of acceleration/deceleration ” and that the “term ‘maximum possible acceleration/deceleration’ ... by definition would be static if it truly were the maximum possible.” In this regard, it is respectfully submitted that the maximum possible acceleration/deceleration does not refer to a theoretical maximum, but instead, refers to an allowable maximum for acceleration/deceleration, e.g., a setting (like a threshold) for a cruise or speed control system (e.g. Specification, p. 4, lines 7 to 11). Accordingly, it is understood that the values of maximum possible vehicle acceleration/deceleration may be set at various values in accordance with the claimed subject matter.

Moreover, the Examiner’s Answer at page 5 asserts that “the mere fact that Asada teaches adjusting acceleration/deceleration reads upon Appellant’s [sic] claim.” In this regard, it is respectfully submitted that claim 1 does not merely refer to adjusting acceleration/deceleration, but instead recites increasing, given a decrease in the time gap, a maximum possible vehicle acceleration/deceleration. Thus, the presently claimed subject matter recites adjusting the maximum values of acceleration/deceleration in response to changes in the time gap, not merely adjusting acceleration/deceleration regardless of the presence or absence of such maximum values.

As regards the feature of *first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle*, the Examiner also relies on column 5, line 40 to column 6, line 4 of Asada et al. However, this section of Asada et al. does not identically disclose, or even suggest, first activating, given the decrease in the time gap, deceleration devices at a shorter distance from the preceding vehicle. Nowhere does Asada et al. even refer to first activating deceleration devices at a shorter distance from the preceding vehicle. Instead, Asada et al. merely indicates “decelerat[ing] the vehicle gradually and increas[ing] the vehicle spacing gradually.” (Asada et al., col. 6, lines 3 to 4 (emphasis added)).

The Advisory Action and the Final Office Action at page 4 assert that column 5, lines 53 to 57 of Asada et al. “teaches ... activating deceleration devices of the vehicle at a shorter distance from the preceding vehicle.” However, as more fully set forth above, the cited section merely indicates how quickly the actual time gap is increased/decreased upon setting a desired time gap, in order to match the actual time gap to the desired time gap. However, nowhere does this cited section refer to first activating deceleration devices at a shorter distance. In this regard, as more fully set forth above, Asada et al. plainly indicates gradually increasing/decreasing vehicle spacing.

The Examiner’s Answer at pages 6 to 8 asserts that “if the time gap were decreased, any activation of deceleration devices would occur at a shorter distance from the preceding vehicle since a decrease of the time gap results in a shorter following distance from the preceding vehicle.” Appellants respectfully disagree. The Examiner’s assertion incorrectly assumes that activation of deceleration devices must take place immediately upon an actual time gap becoming smaller than a set time gap. However, it is respectfully submitted that deceleration devices may be activated at a time gap equal to each other and also smaller than both T-Long and T-Medium, as set forth in the illustrations of the Examiner’s Answer at pages 7 and 8. Thus, it does not necessarily follow that activation of deceleration devices must occur at a shorter distance from a preceding vehicle for a shorter time gap than for a longer time gap. Indeed, the activation of deceleration devices may occur at the same distance from the preceding vehicle for both shorter and longer time gaps, or even at a longer distance from the preceding vehicle for a shorter time gap as opposed to a longer time gap. Moreover, none of the assertions in the Examiner’s Answer at pages 6 to 8 is disclosed by Asada et al.

Accordingly, Asada et al. does not identically disclose, or suggest, the features of claim 1, so that Asada et al. does not anticipate claim 1.

Claim 2 depends from independent claim 1, and thus is allowable for at least the same reasons that claim 1 is allowable.

B. Claim 5 is not anticipated by Asada et al.

Claim 5 of the present application recites:

A method for controlling a speed of a motor vehicle in terms of one of (a) a constant distance control in the case that at least one preceding vehicle is detected by a radar sensor and (b) a constant speed control in the case that no preceding vehicle is detected by a radar sensor, the method comprising:

setting a distance to a preceding vehicle by a driver of the vehicle in the form of a time gap;

changing longitudinal dynamics of the speed control when the time gap changes;

increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap; and

first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle.

As discussed above, Asada et al. does not identically disclose, or suggest, the features of increasing, given a decrease in the time gap, at least one of a maximum possible vehicle acceleration and a maximum possible vehicle deceleration implementable by a speed control system so that the vehicle is capable of at least one of accelerating and decelerating more quickly given the decrease in the time gap, and first activating, given the decrease in the time gap, deceleration devices of the vehicle at a shorter distance from the preceding vehicle, as provided for in the context of claim 5.

In the Examiner's Answer, the Advisory Action, and the Final Office Action, the Examiner again alleged that these features of the present application are described at column 5, line 40 to column 6, line 4 of Asada et al. As more fully set forth above, Asada et al. does not identically disclose, or suggest, these features of the present application.

Accordingly, Asada et al. does not identically disclose, or suggest, the features of claim 5, so that Asada et al. does not anticipate claim 5.

2. CONCLUSION

For at least the reasons indicated above and those set forth in the Appeal Brief, Appellants respectfully submit that the art of record does not disclose or suggest the subject matter as recited in the claims of the above-identified application. Accordingly, it is

respectfully submitted that the subject matter as set forth in the claims of the present application is patentable.

In view of all of the foregoing, reversal of all outstanding rejections is therefore respectfully requested.

Respectfully submitted,

Dated: 23 November 2009

By:



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